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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

RAYMOND ANTHONY ESTRADA,

Defendant and Appellant.

H041955

(Santa Clara County

Super. Ct. No. C1243621)

Appellant Raymond Anthony Estrada appeals from an order denying Proposition 47 resentencing. On appeal, appellant contends that the trial court erred in ruling that he was ineligible for Proposition 47 resentencing on his Vehicle Code section 10851 conviction.

BACKGROUND

On February 15, 2013, appellant was convicted by plea of vehicle theft with a prior conviction (Veh. Code, § 10851, subd. (a)/Pen. Code, § 666.5), attempting to dissuade a witness (Pen. Code, § 136.1, subd. (b)(1)), and felony false imprisonment (Pen. Code, §§ 236/237). The trial court sentenced appellant to four years in prison.

On December 29, 2014, appellant filed a petition for writ of habeas corpus in the trial court, in which he requested resentencing pursuant to Proposition 47. The trial court construed appellant's habeas petition as a "petition brought under [Proposition 47] and the authority of Penal Code § 1170.18(b)." In a written order filed on January 14, 2015,

the trial court denied Proposition 47 resentencing, explaining: “[Appellant] is not eligible for the requested relief because only certain theft and simple drug possession charges are affected by the resentencing provisions of Penal Code § 1170.18(a)-(b). To be eligible, a conviction must be one that would have been a misdemeanor if the newly added or amended sections 11350, 11357 and 11377 of the Health & Safety Code and sections 459a, 473, 476a, 490.2, 496, and 666 of the Penal Code had been in effect at the time the offense was committed. (See Penal Code § 1170.18(a).) None of those sections authorize misdemeanor treatment of the convictions in this case.”

DISCUSSION

Appellant contends that the trial court erred in ruling that he was ineligible for Proposition 47 resentencing on his Vehicle Code section 10851 conviction. His argument is twofold. He first asserts that Proposition 47 “provides for misdemeanor sentences on violations of Vehicle Code section 10851, when the value of the vehicle is under \$950.” He next asserts that it violates equal protection principles to deny misdemeanor sentencing to a Vehicle Code section 10851 conviction involving “theft of a vehicle with a value less than \$950.” As set forth below, we must affirm, but we do so without prejudice.

On November 4, 2014, the voters enacted Proposition 47, the Safe Neighborhoods and Schools Act. (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1089 (*Rivera*).) Proposition 47 “reduced the penalties for a number of offenses.” (*People v. Sherow* (2015) 239 Cal.App.4th 875, 879 (*Sherow*)). “Proposition 47 makes certain drug- and theft-related offenses misdemeanors These offenses had previously been designated as either felonies or wobblers (crimes that can be punished as either felonies or misdemeanors).” (*Rivera, supra*, 233 Cal.App.4th. at p. 1091.)

Appellant’s argument relies on Penal Code section 490.2, which was added by Proposition 47. Penal Code section 490.2 provides, in pertinent part: “Notwithstanding

Section 487 or any other provision of law defining grand theft, obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed nine hundred fifty dollars (\$950) shall be considered petty theft and shall be punished as a misdemeanor” (Pen. Code, § 490.2, subd. (a).)

Penal Code section 1170.18, which was also added by Proposition 47, “creates a process where persons previously convicted of crimes as felonies, which would be misdemeanors under the new definitions in Proposition 47, may petition for resentencing.” (*Sherow, supra*, 239 Cal.App.4th at p. 879.) Penal Code section 1170.18 specifies that a person may petition for resentencing in accordance with Penal Code section 490.2. (Pen. Code, § 1170.18, subd. (a).)

“As an ordinary proposition: ‘A party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense he is asserting.’ [Citations.]” (*Sherow, supra*, 239 Cal.App.4th at p. 879.) Thus, “a petitioner for resentencing under Proposition 47 must establish his or her eligibility for such resentencing.” (*Id.* at p. 878.) The petitioner for resentencing has the “initial burden of proof” to “establish the facts[] upon which his or her eligibility is based.” (*Id.* at p. 880.) If the crime under consideration is a theft offense, “ ‘the petitioner will have the burden of proving the value of the property did not exceed \$950.’ [Citation.]” (*Id.* at p. 879.) In making such a showing, “[a] proper petition could certainly contain at least [the petitioner’s] testimony about the nature of the items taken.” (*Id.* at p. 880.) If the petition makes a sufficient showing, the trial court “can take such action as appropriate to grant the petition or permit further factual determination.” (*Ibid.*)

“Perhaps the most fundamental rule of appellate law is that the judgment challenged on appeal is presumed correct, and it is the appellant’s burden to affirmatively demonstrate error.” (*People v. Sanghera* (2006) 139 Cal.App.4th 1567, 1573.) “The very settled rule of appellate review is a trial court’s order/judgment is presumed to be

correct, error is never presumed, and the appealing party must affirmatively demonstrate error on the face of the record.” (*People v. Davis* (1996) 50 Cal.App.4th 168, 172.)

Here, appellant’s entire appeal is premised on the assumption that the vehicle he stole was valued at \$950 or less. Nothing in the record, however, shows that the vehicle was worth \$950 or less. Indeed, appellant concedes that “the record is silent as to the vehicle’s value.” (Capitalization omitted.) Given that nothing in the record before us shows that the vehicle was valued at \$950 or less, appellant has failed to demonstrate error, and we must affirm.

Appellant asserts that the record’s silence on the issue of value does not defeat his appeal, arguing as follows: “The trial court’s review of appellant’s eligibility for resentencing was limited to the record of conviction. Where, as here, the record of conviction was silent as to the value of the vehicle, this Court should presume that the value of the vehicle was less than \$950.” Appellant’s argument is meritless. The petitioner bears the burden of proving eligibility for Proposition 47 resentencing, and the petitioner may present new evidence—such as a declaration or other testimony—to establish such eligibility. (*Sherow, supra*, 239 Cal.App.4th at pp. 879-880.) Thus, contrary to appellant’s assertion, we cannot presume a value of \$950 or less on this silent record.

Appellant additionally contends that we cannot affirm based on the absence of evidence regarding the vehicle’s value because he “had a due process right to present briefing to the trial court” on the issue of value and he “was not given the opportunity to present arguments” to the trial court on the issue of value. Again, this argument is meritless. When appellant sought resentencing in the trial court, he could have presented arguments and evidence to show that the vehicle involved in his offense was worth \$950 or less. Nothing in the record suggests that appellant was prohibited from presenting such arguments or evidence. Appellant’s due process argument fails.

In sum, because nothing in the record before us shows that the vehicle involved in appellant's offense was worth \$950 or less, appellant has failed to demonstrate error, and we must affirm. Pursuant to appellant's request, we will affirm without prejudice. We note that a Proposition 47 petition containing a declaration regarding the value of the vehicle could be sufficient to set the matter for hearing. (See *Sherow, supra*, 239 Cal.App.4th at p. 880 [a proper Proposition 47 petition "could certainly contain at least" the petitioner's testimony about the stolen item, and on a sufficient showing the trial court "can take such action as appropriate to grant the petition or permit further factual determination"].)

DISPOSITION

The order denying resentencing is affirmed without prejudice to subsequent consideration of a Proposition 47 petition that demonstrates a stolen vehicle valued at \$950 or less.

RUSHING, P.J.

WE CONCUR:

PREMO, J.

MÁRQUEZ, J.

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